



State of
North Dakota
Office of the Governor

John Hoeven
Governor

May 11, 2009

The Honorable David Monson
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

RE: House Bill 1015

Dear Speaker Monson:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Sections 23, 28, 29, 31, and 32 of House Bill 1015 and returned it to the House.

Section 23 is unconstitutional because it requires executive branch officials to seek prior approval for basic managerial affairs from a subset of the Legislature. This requirement violates the inherent authority of the executive branch to manage state agencies.

The role of the legislative branch is to deliberate upon policies and principles to be adopted in the future and the executive branch is charged with administering those policies and principles. Verry v. Trenbeath, 148 N.W.2d 567 (N.D. 1967). If enacted, the budget section would have to review and approve hundreds of funding requests each quarter that would typically be handled by statewide elected officials and agency directors. This would prohibit elected officials and agency managers from effectively responding to changing public needs and properly managing their agencies.

Section 23 would also place North Dakota agencies in violation of the National Fair Labor and Standards Act, which require agencies to pay annual leave and sick leave to the employee on a timely basis.

Section 28 and 29 require the Department of Commerce to seek budget section approval for a specific building that the full Legislative Assembly has approved and set criteria for its funding. The Supreme Court has said except "as otherwise provided in the constitution, the legislature may not delegate legislative powers to others, including to a subset of its members" Kelsh v. Jaeger, 641 N.W.2d 100 (N.D. 2002).

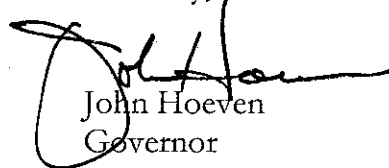
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The Legislature may delegate to a body certain powers to ascertain facts; however, the full "Legislature must set forth reasonably clear guidelines to enable the appropriate body to ascertain the facts." Stutsman County v. State Historical Soc. of North Dakota, 371 N.W.2d 321, 327 (N.D. 1985). Sections 28 and 29 give the budget section unfettered veto power over the will of the full Legislature by granting authority far beyond the responsibility to determine that certain criteria or guidelines are being followed. See N.D.A.G. Opinion 2007-L-08.

Similarly, Section 31 usurps the authority of the full legislative body by transferring that authority to a small subset of the Legislature. Also, Section 31, as well as Section 32, prohibit the Governor from submitting proposed legislative initiatives to the Legislature for consideration and directly violate the Constitution. Article V, Section 7 of the North Dakota Constitution states the "governor shall present ... any recommended legislation to every regular and special session of the legislative assembly." As the North Dakota Supreme Court has opined, "As all of the branches derive their authority from the same constitution, there is an implied exclusion of each branch from the exercise of the functions of the others." City of Carrington v. Foster County, 166 N.W.2d 377, 382 (N.D. 1969).

For these reasons, I have vetoed Sections 23, 28, 29, 31, and 32 of House Bill 1015.

Sincerely,


John Hoeven
Governor

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Received by Jay E. Burzine Date: 5/11/9 Time: 2:05 p.m.